IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

WP(C).No. 31263 of 2007(V)

PETITIONER:

M.S.SUNILKUMAR, MALIEKAL HOUSE,
KIZHUTHANY, THANISSERY P.O.
THRISSUR DISTRICT,
PIN - 680 701.

BY ADV. SRI.BLAZE K.JOSE
SRI.K.K.SUNIL KUMAR (IDUKKI)

RESPONDENTS:
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1. STATE OF KERALA, REP. BY HEALTH AND FAMILY WELFARE DEPARTMENT, GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

2. KERALA STATE POLLUTION CONTROL BOARD, THIRUVANANTHAPURAM, REPRESENTED BY ITS CHAIRMAN.

BY GOVERNMENT PLEADER SRI.BEJOY CHANDRAN
BY ADV. SRI.M.K.CHANDRA MOHANDAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. GIRI ,J.

WP(C).NO. 31263 of 2007

Dated this the 12th day of November, 2007

JUDGMENT

The Pollution Control Board issued a notification in the year 1994 inviting applications from qualified hands for appointment to various posts including the post of Assistant Engineer. Apparently, the petitioner was selected for appointment as a Junior Scientific Assistant and included in the rank list published on 20.4.1995. Pending enforcement of the rank list, the government interfered and decided to withdraw the permission for making regular appointment. Ultimately this led to Ext.P1 judgment. By Ext.P1 this Court directed the Pollution Control Board to enforce the rank list but by making provisional appointments. The petitioner was appointed as a Junior Assistant as per Ext.P2 dated 16.8.1996, pursuant to Ext.P1 judgment. The date on which the petitioner actually joined duty pursuant to Ext.P2 is not mentioned in the writ petition. On 14.11.1996, the petitioner made an application for leave without allowance on medical grounds for 45 days. This was granted under Ext.P3. But on expiry of the said period, petitioner did not rejoin, but applied for leave to take up employment abroad under Ext.P4 dated 21.12.1996. It is common case that the appointing authority did not sanction the said leave. No order

sanctioning the leave sought for under Ext.P4 is produced. In other words, even without the leave being specifically sanctioned, petitioner went abroad for taking up employment and at the end of the two year period, he wanted a further extension by three years as per Ext.P5.

2. It seems that the petitioner's application for leave without allowance for taking up employment abroad was rejected on the premise that he is not eligible for the leave applied for. A perusal of Ext.P6 order shows that he was advised to resign from the service of the Board with effect from 30/12/1996. Petitioner did not join duty on expiry of the period of leave originally granted under Ext.P2. He simply absented himself from duty and on expiry of the original two years period he asked for further extension. The Board by Ext.P6 order finding that the petitioner is a provisional hand and is eligible for leave without allowance for 90 days, proceeded to terminate the petitioner's service with effect from 30.12.1996, the date from which he was unauthorisedly absent from duty. Petitioner sought for a review of Ext.P6 vide Ext.P7. This was directed to be considered by this Court in Ext.P9 judgment. It seems that the representation was then forwarded by the Board to the Government. Government took a decision under Ext.P10 holding that the Government had earlier issued an order regularising the service of provisional employees who were in service

of the Board at that time. Petitioners' service was not regularised due to unauthorised absence at the time when the regularisation took place and hence the petitioner's request cannot be considered. Ext.P10 was sought to be reviewed under Ext.P11 and ultimately in Ext.P12 judgment, this Court directed the Government to reconsider the petitioner's representation. Apparently, by this time, the Board had made a recommendation that the petitioner's services be regularised and referred the matter to the Government. Government reconsidered the matter and took a decision as per Ext.P13 stating that the matter has been examined in detail with reference to the report of the Chairman and the statement made by the petitioner at the time of personal hearing and the Government did not find any ground for reconsideration of the case. Petitioner has again sought for a review of Ext.P13 vide Ext.P14. At the same time the petitioner has approached this Court challenging Exts.P10 and P13 and for a direction to the respondents to appoint and regularise the services of the petitioner in the Board as Assistant Engineer/Junior Scientific Assistant.

3. I have heard the learned counsel for the petitioner, learned standing counsel for the Board and the learned government pleader. In my view, the petitioner is not entitled to any of the reliefs prayed for in the writ petition. What stands foremost in the way of the

petitioner is the fact that even a few months of his entering service pursuant to Ext.P2, he had applied for leave without allowance for taking up employment abroad and even without the same being sanctioned, he had actually proceeded on leave. On expiry of the two year period, he did not rejoin duty. Apparently, he again sought for an extension of leave which was not originally sanctioned. In other words, the petitioner continued to be absent from duty without leave being sanctioned in accordance with the rules. In the circumstances, Ext.P6 order issued by the Board terminating the services of the petitioner, treating him as a provisional appointee cannot be faulted with. I also find that Ext.P6 order passed by the Chairman of the Board has not been challenged in this writ petition.

4. For these reasons, it cannot be said that the government had committed an error in holding under Exts.P10 and P13 that the petitioner's service as a provisional employee stood terminated under Ext.P6 and therefore a subsequent decision taken by the government to regularise the services of provisional employees cannot come to the aid of the petitioner. As a matter of fact, the government had taken such a decision pursuant to the directions of this Court in ***Sindhu v State of Kerala*** reported in (2001(1) KLT 445) but the benefits of the said direction obviously could have been aspired for only by such

persons who were in service as on the date of the judgment. Since the petitioner's appointment as a provisional employee stood terminated vide Ext.P6, the petitioner could not have aspired for the benefits of the judgment as such.

5. Learned counsel for the petitioner submits that since the Board had decided to regularise the services of the petitioner, the government had no reason to deny such permission, according to the judgment in *Sindhu's case.* In my view, this may not really improve the petitioner's case for two reasons:

i) Ext.P6 order terminating the services of the petitioner, treating him as a provisional employee for the period when he was in service pursuant to Ext.P2 is not liable to be interfered with, and at any rate has become final.

ii) The petitioner himself had sought for interference by the government and this had actually led to Ext.P12 judgment by this Court wherein a direction was issued to the government to re-consider the issue. Petitioner accepted Ext.P12 judgment. The petitioner thereafter approached this Court again and sought for a direction to the government to reconsider the issue. It is too late in the day for the petitioner to contend that the government has no jurisdiction to interfere in this matter.

6. In the ultimate analysis, I am not inclined to exercise my discretionary jurisdiction in favour of a person who had proceeded on leave for taking up employment abroad without waiting for the leave being sanctioned by the competent authority and then aggravated the problem applying for extension of the leave even without the original leave being sanctioned.

For all these reasons, the writ petition is bereft of any materials and it is dismissed.

V. GIRI, JUDGE

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